

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3609 of 1998

with

SPECIAL CIVIL APPLICATION No 3610 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and  
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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UNION OF INDIA

Versus

SR SURWADE RETIRED ITO

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Appearance:

1. Special Civil Application No. 3609 of 1998  
MR BHARAT NAIK for Petitioners  
MR MS TRIVEDI for Respondent No. 1
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CORAM : MR.JUSTICE B.C.PATEL and  
MR.JUSTICE A.L.DAVE

Date of decision: 24/03/99

ORAL JUDGEMENT

1. Against the decision rendered by the Central Administrative Tribunal, Ahmedabad Bench, in O.A. No.591

of 1997 on 1.1.1998, Union of India has preferred this petition.

2. The respondent, a retired Income Tax Officer, moved the Tribunal by preferring the aforesaid application. The department, after the retirement of respondent herein, found that earlier order dated 20th July, 1984 granting two advance increments in the year 1971 were not in order. The decision was taken on the basis of the Central Board of Direct Taxes (CBDT) letter dated 23.7.1986. The department, in view of this, took a decision to recover the amount from the Death-cum-Retirement Gratuity of the respondent. It is this action of the department which was challenged before the Tribunal.

3. It appears that the Tribunal has considered the decision of the Apex Court in the case of Shyam Babu v. Union of India and Others, 1994(1) SLR 827, in paragraph 5 of its order, wherein it is held that no action could be taken without issuing a show cause notice and hearing the person concerned. In case of Bhagwan Shukla v. Union of India and others, 1994 SCC (L&S) 1320, as observed by the Tribunal, if any excess payment is made due to administrative error of the department, recovery of amount of over payment could not be made from the pay of the applicant and especially from DCRG at the time of retirement, without giving notice to him and, if recovery is already made, it should be refunded.

4. In the instant case, Mr. Naik states that no such recovery has been made and, as per the order of the Tribunal, the amount has been paid. The Tribunal ought to have given an opportunity to the department to give a show cause notice instead of deciding the matter itself. By this order, the Tribunal has arrested the decision making process of the department. After the show cause notice is issued, on the basis of the reply which may be submitted by the respondent, if the department is satisfied, it may not take any action in the matter, but the right to consider the case on merits cannot be taken away. Mr. Naik submitted that in view of the decision in case of V. Gangaram v. Regional Joint Director, AIR 1997 SC 2776, wherein the department by itself wrongly gave four increments, recovery of excess payment prior to 1985 was not allowed and recover after 1985 was directed to be made from the pension. He submitted that the department will have to consider the facts and circumstances of the case after considering the submission that may be made by the respondent and, thereafter, the department will have to take a decision.

The Tribunal in the concluding portion passed an order as under :-

"The order issued by the department dated 6.6.1996 (Annexure A-II) ordering recovery of over payment is hereby quashed and set aside."

Annexure A-II dated 6.6.1996 is a letter addressed from the Zonal Accounts Office to the Assistant Commissioner of Income Tax, Ahmedabad, where in paragraph 3, the recovery of over payment was asked to be worked out. It was also pointed out that the same should be adjusted from the payment of DCRG. The statement of due drawn and difference to be recovered should be prepared and sent to the office for refixing the pay as stated above for verification of its correctness and to effect the recovery from DCRG. This was the stage before taking any action and after this action is over, respondent is required to be heard and, thereafter, the order is to be passed. Till today, there is no show cause notice and no order for recovery from DCRG and yet the Tribunal, on the basis of that letter, has passed an order which, in our view, cannot be sustained as there is no order passed by the Department. It is only departmental instructions and after the order is communicated, it would be always open to the respondent to challenge the same. It is a bounden duty of the department to consider the reply that may be submitted by the respondent herein following the show cause notice and considering the statute and the law laid down by the Apex Court, the department has to proceed. With regard to the payment already received, we direct the respondent to file an undertaking before this Court that in case the order is passed by the department against the respondent, he shall repay the amount within a period of four weeks. Petition stands allowed accordingly with no order as to costs. Rule is made absolute.

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